

FIBER TECHNOLOGIES NETWORKS, LLC
Docket Nos. A-311101, A-311101F0002
A-311101F0003 & A-311101F0004

Fiber Technologies Networks, LLC (“Respondent”) is seeking a Certificate of Public Convenience to provide telecommunication services as a Reseller of Interexchange Toll Services, a Reseller and Facilities-Based Competitive Local Exchange Carrier, a Competitive Access Provider and a Facilities-Based Interexchange Carrier in Pennsylvania. Respondent has filed the proposed tariffs with its applications for the above mentioned telephone services. The proposed tariffs contain certain deficiencies that are discussed here. Respondent should address these deficiencies before the tariffs can be approved.

Reseller of Interexchange Toll Services tariff deficiencies: (A-3 11 101)

1. This tariff should be Tariff Telephone-Pa. P.U.C. No. 1
2. Each Page should read IXC Reseller.
3. Title page should read as follows:

REGULATIONS AND SCHEDULE OF CHARGES
 APPLYING TO
 RESELLER OF INTEREXCHANGE TOLL SERVICES
 WITHIN THE COMMONWEALTH OF PENNSYLVANIA

Provided by
 Fiber Technologies Networks, L.L.C
 140 Allens Creek Road
 Rochester, New York 14618

4. Section 2 Page 1 – Scope - Change the first paragraph to read as follows

This tariff contains the descriptions, regulations and rates applicable to the furnishing of resold IntraLATA and InterLATA Toll services within the Commonwealth of Pennsylvania by Fiber Technologies Networks, L.L.C. This tariff is on file with the Pennsylvania Public Utility Commission, and copies may be inspected, during normal business hours, at the Company’s principal place of business, 140 Allens Creek Road, Rochester, New York 14618.

5. The Company should show the regular charge for installation and/or maintenance in the rate section of the tariff.
- 6 The restoration charge should be shown in the rate section of the tariff
- 7 Section 2 5 4 – Page 15 – A customer who wishes to have service discontinued shall give at least 5 days oral or written notice to the Company
8. The Company refers to non-recurring charges throughout the tariff, the charges are not shown in the rate section. The Company should include any other charges in the rate section that they would like to impose.
9. Page 25 – Section **4.6.2G** – The tariff should include the cost for installation charges and the restoration charge
- 10 Page 26 – Section 4 6 3 A - Change the wording to Billing Disputes can be made orally or written
11. Page 30 – Section 4.6.5 – A customer who wishes to have service discontinued shall give at least 5 days oral or written notice to the Company.

Competitive Local Exchange Carrier tariff deficiencies: (A-311101F0002)

- 1 This tariff should be Tariff Telephone-Pa. P.U.C.No. 2.
- 2 Each Page should read Competitive Local Exchange Carrier

3. Title page should read as follows:

REGULATIONS AND SCHEDULE OF CHARGES
APPLYING TO
RESELLER AND FACILITIES-BASED
COMPETITIVE LOCAL EXCHANGE CARRIER

Provided by
Fiber Technologies Networks, L L C
140 Allens Creek Road
Rochester, New York 14618
In
The Commonwealth of Pennsylvania
in
The territory served by Verizon Pennsylvania, Inc

- 4 Section 1 – Page – 1 – Check Sheet – Section 1 has 14 original sheets

5. Section 1 -Page 7 - Replace the first paragraph with the following

This tariff sets forth the service offerings, rates, terms and conditions applicable to the furnishing of Resold and Facilities-Based Competitive Local Exchange Service to customers located in the service territory of Verizon Pennsylvania, Inc. This tariff is on file with the Pennsylvania Public Utility Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business, 140 Allens Creek Road, Rochester, New York 14618.

The Company's Tariff is in concurrence with all applicable State and Federal Law (including, but not limited to, 52 Pa. Code, 66 Pa. C.S. and the Telecommunications Act of 1996), and with the Commission's applicable Rules and Regulations and Orders. Any provisions contained in this Tariff that are inconsistent with the foregoing mentioned will be deemed inoperative and superseded.

- 6 Section 2.1.1.A - Change the first sentence to read as follows. The Company undertakes to furnish Resold and Facilities-Based Competitive Local Exchange Services according to the terms of this tariff to customers located in the service territory of Verizon Pennsylvania, Inc.

7. Section 2.5.1.A - Insert the following – Payments may be required in advance of furnishing any of the following services: 1) Seasonal Service 2) The construction of facilities and furnishing of special equipment and 3) Temporary service for short-term use.
8. Section 2.6.3.A – Change the wording to: Billing Disputes can be made orally or written.
9. Section 4 – Your Application requested service in the territory of Verizon Pennsylvania, Inc. You are required to have in your tariff a list of exchanges and their local calling area.
10. Section 3.2 discusses charges based on duration of use and Section 3.3 discusses rates based upon distance. Neither of these rates is covered in the rate section. The rate section does not cover ordinary services provided by a CLEC such as three way calling, call forwarding etc.
11. A Competitive Local Exchange Carrier is required to provide certain services in the state of Pennsylvania and these services were either omitted or the required language was not included in the proposed tariff.
 - a) Lifeline Service Plan
 - b) Link Up America
 - c) Pa Telephone Relay Service and the surcharge rates
 - d) 911 Emergency Service Language
 - e) Blocking Service for Caller ID and Caller ID Deluxe
 - f) IntraLATA Presubscription Plan
 - g) Call Blocking 900/976 and Toll Denial Services
12. If the Company wishes to offer any additional local services provide the description in Section 5 and the applicable rates in Section 7.
13. A Facilities-Based CLEC is also required to file a separate Switched Access Tariff, which will be Tariff Telephone-Pa. P.U.C.No. 5. The application included the switched access portion in the Competitive Access Provider tariff, in Pennsylvania these two authorities must be separate,
14. Include in your tariff language stating that residential service will be available at the business rates if requested until the Company is able to offer the service.

Competitive Access Provider tariff deficiencies: **(A-311101F0003)**

1. This tariff should be Tariff Telephone-Pa. P.U.C. No. 3
2. Each Page should read Competitive Access Provider.
3. Title page should read as follows:

REGULATIONS AND SCHEDULE OF CHARGES

GOVERNING THE PROVISION OF

COMPETITIVE ACCESS SERVICE

APPLYING TO POINT-TO-POINT

WITHIN THE COMMONWEALTH OF PENNSYLVANIA

Provided by
Fiber Technologies Networks, L.L.C
140 Allens Creek Road
Rochester, New York 14618

4. Section 1 Page 7 pertaining to Tariff Format was missing in my copy of the tariff
5. Section 2.1.1.A-Replace your sentence with the following. This Tariff sets forth the service offerings, rates, terms and conditions applicable to the furnishing of Point-to-Point service within the Commonwealth of Pennsylvania by Fiber Technologies Networks, Inc. The Company's Tariff is in concurrence with all applicable State and Federal Law (including, but not limited to, 52 Pa. Code, 66 Pa. C.S and the Telecommunications Act of 1996) and with the Commission's applicable Rules and Regulations and Orders. Any provision contained in this Tariff that is inconsistent with the foregoing mentioned will be deemed inoperative and superseded. This Tariff is on file with the Pennsylvania Public Utility Commission and copies may be inspected during normal business hours at the Company's principal place of business.
6. Remove the language pertaining to switched access service and the applicable rates Include this information in your Switched Access Tariff No. 5. Retain all language and information pertaining to the Competitive Access Provider service.

APPENDIX A

A-311101

A-311101F0002

A-311101F0003

A-311101F0004

Facilities-Based Interexchange Carrier tariff deficiencies: (A-311101F0004)

1. This tariff should be Tariff Telephone-Pa. P U.C.No 4
- 2 Each Page should read Facilities-Based IXC
- 3 Title page should read as follows

REGULATIONS AND SCHEDULE OF CHARGES
APPLYING TO
FACILITIES-BASED INTEREXCHANGE TOLL SERVICES
WITHIN THE COMMONWEALTH OF PENNSYLVANIA

Provided by
Fiber Technologies Networks, L.L.C
140 Allens Creek Road
Rochester, New York 14618

- 4 Section 3 has two original Pages 1 rather than Page 2 and Page 3
- 5 Section 2.1 1.A – Replace your sentence with the following. This Tariff contains the descriptions, regulations and rates applicable to the furnishing of Facilities-Based IntraLATA and InterLATA Toll services within the Commonwealth of Pennsylvania by Fiber Technologies Networks, L.L.C. The Company's Tariff is in concurrence with all applicable State and Federal Law (including, but not limited to, 52 Pa. Code, 66 Pa C.S. and the Telecommunications Act of 1996) and with the Commission's applicable Rules and Regulations. **Any** provision contained in this Tariff that is inconsistent with the foregoing mentioned will be deemed inoperative and superseded. This tariff is on file with the Pennsylvania Public Utility Commission, and copies may be inspected during normal business hours, at the Company's principal place of business.
- 6 Section 2.5.3.A.1 – Change the wording to billing disputes can be made orally or written
7. Section 2.5.5.F – The tariff refers to a reconnection charge, this charge should be shown in the rate section.
8. Section 2.5 6 A – **A** customer who wishes to have service discontinued shall give at least 5 days oral or written notice to the Company.

SWITCHED ACCESS SERVICE
FOR CONNECTION TO COMMUNICATIONS FACILITIES
TARIFF

Provided by
Fiber Technologies Networks, L.L.C.
140 Allens Creek Road
Rochester, New York 14618

This tariff sets forth the service offerings, rates, terms and conditions applicable to the furnishing of switched access services for connection to communications facilities of **Fiber Technologies Networks, L.L.C.** (the "Company") to customers within the Commonwealth of Pennsylvania. The Company's principal office is located at the following: 140 Allens Creek Road, Rochester, New York 14618. This schedule of rates and charges applies for the services furnished within and throughout the Commonwealth of Pennsylvania. *The Company's Tariff is in concurrence with all applicable State and Federal Law (including, but not limited to, 51 Pa. Code, 66 Pa C.S., the Telecommunications Act of 1996), and with the Commission's applicable Rules and Regulations and Orders. Any provision contained in this Tariff that is inconsistent with the foregoing mentioned will be deemed inoperative and superseded.* This tariff is on file with the Pennsylvania Public Utility Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

ISSUED: June 18.2002

EFFECTIVE: June 19,2002

Charles Stockdale
Vice President and Corporate Counsel
140 Allens Creek Road
Rochester, New York 14618

**RESELLER OF INTEREXCHANGE TOLL SERVICES
TARIFF**

**Provided by
Fiber Technologies Networks, L.L.C.
140 Allens Creek Road
Rochester, New York 14618**

Issued: June 18,2002

Effective: June 19,2002

**Charles Stockdale
Vice President and Corporate Counsel
140 Allens Creek Road
Rochester, New York 14618**

**REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES
APPLYING TO
RESELLER AND FACILITIES-BASED
COMPETITIVE LOCAL EXCHANGE CARRIER**

Provided by
Fiber Technologies Networks, L.L.C.
140 Allens Creek Road
Rochester, New York 14618
In
The Commonwealth of Pennsylvania
In
The territory served by Verizon Pennsylvania, Inc.

Issued:

Effective:

Charles Stockdale
Vice President and Corporate Counsel
140 Allens Creek Road
Rochester, New York 14618

COMPETITIVE ACCESS PROVIDER TARIFF

Provided by
Fiber Technologies Networks, L.L.C.
140 Allens Creek Road
Rochester, New York 14618

This tariff sets forth the service offerings, rates, terms and conditions applicable to the furnishing of intrastate access services for connection to communications facilities of **Fiber Technologies Networks, L.L.C.** (the "Company") to customers within the Commonwealth of Pennsylvania. The Company's principal office is located at the following: 140 Allens Creek Road, Rochester, New York 14618. This schedule of rates and charges applies for the services furnished within and throughout the Commonwealth of Pennsylvania. *The Company's Tariff is in concurrence with all applicable State and Federal Law (including, but not limited to, 51 Pa. Code, 66 Pa C.S., the Telecommunications Act of 1996), and with the Commission's applicable Rules and Regulations and Orders. Any provision contained in this Tariff that is inconsistent with the foregoing mentioned will be deemed inoperative and superseded.* This tariff is on file with the Pennsylvania Public Utility Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

ISSUED: June 18,2002

EFFECTIVE: June 19,2002

Charles Stockdale
Vice President and Corporate Counsel
140 Allens Creek Road
Rochester, New York 14618

**FACILITIES-BASED INTEREXCHANGE TOLL SERVICES
TARIFF**

**Provided by
Fiber Technologies Networks, L.L.C.
140 Allens Creek Road
Rochester, New York 14618**

Issued: June 18, 2002

Effective: June 19, 2002

**Charles Stockdale
Vice President and Corporate Counsel
140 Allens Creek Road
Rochester, New York 14618**

Exhibit “F”

ROTHMAN GORDON

Louis B. Kushner
Thomas R. Solomich
Stephen H. Jordan
Frederick A. Polner
James R. Farley
Ronald G. Backer
Shelley W. Elowitz
K. Sidney Neuman

Mark S. Weis
William E. Lestitian
Robert A. Galanter
James W. Carroll, Jr.
Paul R. Yagelski
Alan C. Blanco
Phyllis T. Procopio
Bernadette L. Puzzuolo
R. Douglas McNardo

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Of Counsel,
Jack G. Armstrong
Emil W. Herman
1934 - 1999
Norman A. Goudine
1916 - 2000

DIRECT DIAL (412) 338-1111

September 6, 2002

Mr. Mario R. Rodriguez
Director of Government Affairs
& Facilities Access
Fibertech Networks
140 Allens Creek Road
Rochester, NY 14618

RE: Blawnox, Pennsylvania

Dear Mr. Rodriguez:

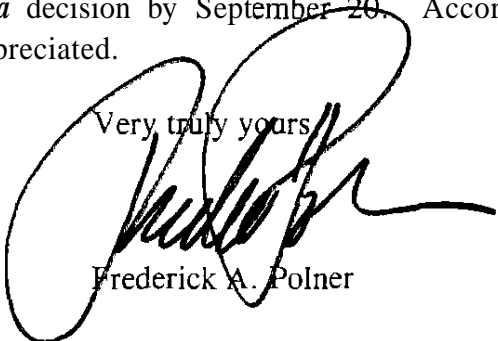
The Borough is proceeding with evaluating your company's request for exemption from compliance with the Borough's Rights of Way Ordinance.

Kindly contact the Borough office, (412) 828-4141, to arrange a time for one of your field personnel to identify your cable in the Borough's rights of way.

In lieu of a visit to the Borough, you may furnish a complete set of maps and drawings to reflect the location of your cable and its position on the **poles**.

The Borough would like to make a decision by September 20. Accordingly, your prompt response to the request would be appreciated.

Very truly yours,



Frederick A. Polner

FAP/gld

cc: Mr. Sam McNaughton, Council President
Tom Smith, Mayor
Randy Stoddard, Member of Council
Denny Chuvala, Member of Council
Sherry Kordas, Borough Manager
John F. Cambest, Esquire

Exhibit “G”

THOMAS M. SMITH, MAYOR

RDM, INC., BOROUGH MANAGER

JOHN F. CAMBEST, ESP, SOLICITOR
THE SENATE COMPANY, ENGINEERS
GEORGE P. BUCHA, CHIEF OF POLICE
KATHLEEN ULANOWICZ, TAX COLLECTOR
CODE SYS, BUILDING INSPECTOR
DANIEL LASKEY, ZONING OFFICER

COUNCIL
SAMUEL H. MCNAUGHTON JR. PRESIDENT
CLYDE F. GLESSNER, VICE-PRESIDENT
RANDALL R. STODDARD
SCOTT L. KRAUSE
DEBORAH E. LASKEY
KIMBERLY A. HILLWIG
DENNIS G. CHUVALA

Borough of Blawnox Allegheny County

376 FREEPORT ROAD
BLAWNOX, PITTSBURGH, PA. 15238
(412) 828-4141
FAX (412) 828-7138

INVOICE

Invoice Date:	October 17, 2002		
Invoice to:	Mr. Mario Rodriguez Director of Government Affairs & Facilities Access Fibertech Networks 140 Allens Creek Road Rochester, NY 14618		
Description	Number of linear feet	Charge per linear foot	Total Fee Due
Right-of-Way Franchise Fee for Telecommunications System in Blawnox Borough Type: Aerial	3,560	\$2.50	\$8,900.00

Please remit within **30** days from **date of** invoice.

Make checks payable to:

"Borough of Blawnox", 376 Freeport Road, Pittsburgh, PA 15238.

If you have questions regarding this invoice, please contact (412) 828-4141.

cc: F. A. Polner

Exhibit “H”

R O T H M A N G O R D O N

Louis B. Kushner
Thomas R. Solonich
Stephen H. Jordan
Frederick A. Polner
James R. Farley
Ronald G. Backer
Shelley W. Elowitz
K. Sidney Neuman

Mark S. Weiss
William E. Lestitian
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Of Counsel
Jack G. Armstrong

Emil W. Herman
1934 - 1999
Norman A. Groudlene
1916 - 2000

DIRECT DIAL # (412) 338-1111

December 12, 2002

Certified Mail/Return Receipt Requested
No.: 7001 2510 0001 4765 7253

Robert Witthauer, Esquire
Deputy General Counsel
Fibertech Networks
i40 Allens Creek Road
Rochester, N.Y. 14618

RE: Blawnox, Pennsylvania

Dear Mr. Witthauer:

Introduction

The purpose of this letter is **to** respond to the legal position of your company. For the following reasons, discussed in this letter, the Borough finds such position to be unavailing. The letter concludes by making demand for full compliance with the Borough's Rights of Way Ordinance, Ordinance No. 529

Discussion

By an invoice from our client, Borough of Blawnox, Pennsylvania, dated October 17, 2002 your company was billed \$8,900.00 for a rights-of-way fee pursuant to local ordinance.

On November 12, you phoned me to question whether the Borough had the legal right to impose a rights-of-way fee on cables occupying a state road. In support of your position, you cite two Pennsylvania cases, Pennsylvania Power and Light Co. v. West Mahoney Township, 33 D&C 2d 268 (Schuylkill Co., 1963) and Bell Telephone Co. v. Bristol Township, 54 D&C 2d 419 (Hucks Co., 1971).

Robert Witthauer, Esquire
December 12, 2002
Page 2

We have examined the cases which you have cited, but find them lacking the persuasive value which you assert.

As to Pennsylvania Power and Light Co., the holding of the court is premised upon a provision of the State Highway Law. That provision, codified at 36 PA CSA § 670-411, however, only pertains to poles or other structures erected in a state highway. In the instant matter, the invoice rendered by the Borough is *not* for poles or structures. Further poles and structures are not even at issue.

As to Bell Telephone Co., that case does not pertain to whether the Borough can impose a rights-of-way fee for use of a state highway. Rather it is a decision of one lower court judge founded on his view that matters falling within the purview of the Public Utility Commission repose exclusively before that Commission to the exclusion of the municipality. In that regard, even if a court having jurisdiction over the Borough of Blawnox were to agree with this one lower court judge's view from a different county, my client's ordinance is consistent with such view.

Please note the ordinance specifically excludes from its purview "A specific Telecommunications Service regulated by the Commonwealth of Pennsylvania Public Utility Commission as a public utility for which a certificate of public convenience has been obtained and a tariff therefor has been filed." (See Section 1.1(P)(b)(2) of the Ordinance. A copy of the Ordinance was sent to John K. Purcell, the president of your company last March.)

Thus, the ordinance exempts those companies which can demonstrate all three (3) of the following are present:

- (1) the service provided is one which is regulated by the Pennsylvania Public Utilities Commission; and
- (2) the service provided has been authorized by a Certificate of Public Convenience issued by the Pennsylvania Public Utilities Commission; and
- (3) the service provided has a tariff on file with the Pennsylvania Public Utilities Commission.

The Borough has examined the various information supplied by Fihertech. It has concluded that although Fihertech has satisfied condition (2) it has not fully satisfied conditions number (1) and number(3)

Even though Fibertech may have strung only one cable in the rights of ways, the Ordinance is designed to look separately at the specific services which are provided through that cable (see Section 1.1(P)(b)(2), exempting a specific Telecommunications Service regulated by the Pennsylvania Public Utilities Commission as a public utility). In this regard, the Borough notes that even though Fibertech has furnished copies of several Certificates of Public Convenience and copies of several tariffs, inside four (4) of those tariffs is the following provision:

For special situations, rates for services not covered under this tariff will be determined on an Individual Case Basis (ICB) and specified by contract between the Company and the Customer. Such contracts will be approved by the Pennsylvania Commission prior to the provision of such service.

This means that Fibertech is holding itself out to use its cable in the Borough's rights of way on an Individual Case Basis ("ICB") upon negotiated terms and conditions. This means a Fibertech customer will not be purchasing a service off the tariff. Moreover, it is likely that by doing so, Fibertech converts itself (for that service) to a private utility, removing itself from the jurisdiction of the Pennsylvania Public Utility Commission. That being so, for at least the specific service in question, Fibertech's cable strung in the rights of way is *not* exempt from compliance with the Ordinance.

Moreover, the law is clear that the Borough has the right to impose the rights of way fee as specified in the Ordinance. In this regard the Pennsylvania Supreme Court has held that "the streets and alleys of cities, towns and boroughs are under the control and direction of . . . municipalities. and they have all the power over them that can lawfully exist." Wood v. McGrath, 150 Pa. 451, 456, 24 A. 682, 683 (1892).

Under Pennsylvania law, municipalities have the right to charge private parties rent for the use of their respective streets and rights-of-way. For example, in Philadelphia v. Holmes Elec. Protective Co., 335 Pa 273, 6 A.2d 884 (1939), the city passed an ordinance that gave the defendant corporation permission to place wires under the city's streets in the course of the corporation's business. The ordinance also provided that the corporation would pay the city two percent of its annual gross receipts. The city later sued the corporation for money due under the ordinance, and the Pennsylvania Supreme Court held:

As a consideration for permitting it to operate underground wires in the streets the City could exact whatever payments in the nature of rentals it might deem proper . . . But the consideration exacted in the ordinance is neither a tax nor a license fee; it is in

Robert Witthauer, Esquire
December 12, 2002
Page 3

the nature of an annual rental to be paid for the privilege for the use of the space under the streets. When such an ordinance is accepted and acted on by the grantee of the privilege the corporation becomes contractually bound to pay the consideration and perform the terms and conditions specified in ordinance, and the contract thereby formed has the same legal status as any other contract.

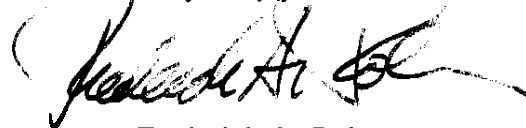
Id. at 277-79, 6 A.2d at 886-88.

Conclusion

Your company owes Borough of Blawnox \$8,900. That amount was due on November 18, 2002. The Ordinance provides that in the event timely payment is not made, interest shall be compounded daily and set at the one-year United States Treasury Bill rate, plus three (3) percentage points.

It is the hope **of** the Borough that enforcement of the Ordinance will not be needed. However, your company's continued failure to make full payment will leave the Borough no alternative but to take all legal and equitable action necessary or appropriate to enforce the Ordinance against your company, including imposing the fine of six hundred (\$600) dollars per day specified at Section 7.2 of the Ordinance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Frederick A. Polner", with a stylized flourish at the end.

Frederick A. Polner

FAP/amd

cc: Sam McNaughton, Council President
Randy Stoddard, Member of Council
Dennis Chuvala, Member of Council
Tom Smith, Mayor
Sherry Kordas, Borough Manager
John F. Cambest, Esquire

c:\CORP\51324\012 Fibernach Network - LLC - Letters\Witthauer 12.12.02.doc

Exhibit “I”

DODARO, KENNEDY & CAMBEST

ATTORNEYS AT LAW

1001 ARDMORE BOULEVARD, SUITE 100

PITTSBURGH, PENNSYLVANIA 15221-5233

TEL: (412) 243-1600

FAX: (412) 243-1643

December 24, 2002

Fibertech Networks
140 Aliens Creek Road
Rochester, NY 14618

112: Violation Ordinance No. 529/Borough of Blawnox

Gentlemen:

As you are aware, I am the Solicitor for the Borough of Blawnox. The representatives of the Borough have informed me that your company has failed to remedy the violations of Ordinance No. 529 that it has engaged in. The continued violations of the provisions of Ordinance No. 529 may subject your organization to a fine of up to \$600 plus all court costs and reasonable attorney's fees incurred by the Borough. Accordingly, the Borough must insist that you immediately remedy the violations of Ordinance No. 529 that your organization has engaged in, including but not limited to the payment of the franchise fee pursuant to Section 4 of Ordinance 529. If you do not remedy the violations of Ordinance 529 within thirty (30) days of the date of this letter, the Borough will have no other alternative but to seek the appropriate legal action to correct any and all franchise fees as well as request the removal of any equipment of your organization from its public rights of way.

For your convenience, I am enclosing a copy of Ordinance No. 529 as well as a copy of the most recent bill Forwarded to your organization for the use of the rights of way in the Borough of Blawnox.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



John F. Cambest

JFC:bw

Cc: Sherry Kordas, Blawnox Manager/Secretary
Fred R. Polner, Esquire